

below that the cited reference fails to disclose the present invention and the examiner is therefore requested to withdraw the objections.

In Numbered paragraph 4 the examiner rejects claim cites to Dolan as disclosing "a master controller." In fact Dolin discloses two "control cells," both of which are necessary to the operation of the invention. Because the present invention uses only one master controller, the disclosure of a system requiring two units is not anticipatory, even if they are analogous in function. The examiner is requested to withdraw the objection.

In numbered paragraph 5, the examiner rejects claim 22 for the disclosure of virtual devices that are "maintained in substantially similar conditions." Nothing in the Dolin reference mentions anything about maintaining any condition of any variable. The examiner is requested to withdraw the objection.

In numbered paragraph 6, the examiner rejects claim 23, citing Dolan as disclosing "a device manager." Applicant can find no disclosure of such a device in either the Dolan specification or figures. Examiner is requested to cite to the device with specificity or withdraw the rejection.

In numbered paragraph 7, the examiner rejects claim 24, and cites five columns of text in Dolan as disclosing a number of elements relating to data change requests. Applicant cannot find any specific disclosure corresponding to such data change requests. Examiner is requested to cite the elements with specificity or to withdraw the rejections.

In numbered paragraph 8, examiner rejects claim 25, and cites one column of text as disclosing a data state request sent by the master controller. Applicant can locate no specific recitation of such a feature and requests that the examiner cite with more specificity or withdraw the rejection.

In numbered paragraph 9, examiner rejects claim 26, and cites more than five columns of text as disclosing various device state change requests. Applicant is unable to locate any specific recitation of such elements and thus requests that examiner cite with more specificity or withdraw the rejection.

In numbered paragraph 10, examiner rejects claim 27, and cites more than five columns of text as disclosing various aspects of device state replication. Applicant is unable to locate any specific recitation of such elements and thus requests that examiner cite with more specificity or withdraw the rejection.

In numbered paragraph 11, examiner rejects claim 28, and cites more than seven columns of text as disclosing various aspects of level data input. Applicant is unable to locate any specific recitation of such elements and thus requests that examiner cite with more specificity or withdraw the rejection.

In numbered paragraph 12, examiner rejects claim 29, and cites more than seven columns of text as disclosing various aspects of channel change input. Applicant is unable to locate any specific recitation of such elements and thus requests that examiner cite with more specificity or withdraw the rejection.

In numbered paragraph 13, examiner rejects claim 30, and cites more than seven columns of text as disclosing various aspects of string change input. Applicant is unable to locate any specific recitation of such elements and thus requests that examiner cite with more specificity or withdraw the rejection.

In numbered paragraph 14, examiner rejects claim 31, and cites more than seven columns of text as disclosing various aspects of command change input. Applicant is unable to locate any specific recitation of such elements and thus requests that examiner cite with more specificity or withdraw the rejection.

In numbered paragraph 15, examiner rejects claim 32, and cites Dolan as disclosing level input from an associated external device. Applicant is unable to locate any specific recitation of such an element and thus requests that examiner cite with more specificity or withdraw the rejection.

In numbered paragraph 16, examiner rejects claim 33, and cites Dolan as disclosing level input from a user. Applicant acknowledges that there is disclosure to this effect, but since the

reference has not been shown to disclose all of the underlying elements of dependant claim 33, it is not anticipated. Examiner is therefore requested to withdraw the rejection.

In numbered paragraph 17, examiner rejects claim 34, and cites Dolan as disclosing linking between a virtual device state and a device occurring at run-time. Applicant is unable to locate any specific recitation of such an element and thus requests that examiner cite with more specificity or withdraw the rejection.

In numbered paragraph 18, examiner rejects claim 35, and cites Dolan as disclosing linking between a virtual device state and a device being modified at run-time. Applicant is unable to locate any specific recitation of such an element and thus requests that examiner cite with more specificity or withdraw the rejection.

In numbered paragraph 19, examiner rejects claim 36, and cites Dolan as disclosing linking between a virtual device state and a device state that may be defined only at compile time. Applicant is unable to locate any specific recitation of such an element and thus requests that examiner cite with more specificity or withdraw the rejection.

Finally, in numbered paragraph 20 the examiner states that claims 1-20 and 37-45 have "similar limitations" as claims 21 through 36. Applicant points out that there is no similarity standard for anticipation. The examiner is requested to cite with specificity what he has identified as the anticipating disclosures so that Applicant may respond in an informed manner. Alternatively, the examiner is requested to withdraw the rejections.

### **Rejections under 35 U.S.C. §103(a)**

The examiner rejects claims 1-45 under §103 as unpatentable over Hatakeyama in light of Yuasa. There is discussion of claims 21-36 in the action, while the remainder of the claims are said to "have similar limitations," and are therefore rejected for the same reasons. Applicants object to the nonspecific rejection of these claims and requests that the examiner evaluate each rejected claim in an appropriate manner, or withdraw the rejections.

The Federal Circuit has recently held that it is not appropriate for the Board to reject claims on the basis of what the Board members have determined to be "basic knowledge" or

"common sense" for one of skill in the art based only on their own experience or understanding of the art. *In re Zurko*, 258 F.3d 1379 (Fed. Cir. 2001). The Court stated that in order to support an obviousness rejection there must be "***some concrete evidence in the record*** to support [the] findings." *Id.* (emphasis added). This point was further elucidated by the Court in *In re Lee* when it stated:

" The patent examiner and the Board are deemed to have experience in the field of the invention; however, this experience, insofar as applied to the determination of patentability, must be applied from the viewpoint of 'the person having ordinary skill in the art to which said subject matter pertains,' the words of section 103. In finding the relevant facts, in assessing the significance of the prior art, and in making the ultimate determination of the issue of obviousness, the examiner and the Board are presumed to act from this viewpoint. Thus when they rely on what they assert to be general knowledge to negate patentability, that knowledge must be articulated and placed on the record. The failure to do so is not consistent with either effective administrative procedure or effective judicial review. **The board cannot rely on conclusory statements when dealing with particular combinations of prior art and specific claims**, but must set forth the rationale on which it relies." *In re Lee*, 277 F.3d 1338 (Fed. Cir. 2002) (emphasis added).

The analysis in the office action is strictly conclusory. The examiner relies on the fact that the elements of the present invention can supposedly be found in the combination of references as the basis for finding both the motivation and suggestion to combine them. The standard enunciated by the Federal Circuit has clearly not been met. There is no citation to anything "concrete" in the record to support either the suggestion to combine Hatakeyama and Yuasa or the motivation to do so.

The examiner is therefore respectfully requested to furnish specific evidence for the teaching of all of the elements of the present invention in all of the rejected claims, and for the motivation or suggestion to combine the elements thus taught to achieve the subject matter of the present invention, or in the alternative, to withdraw the rejections based on § 103(a).

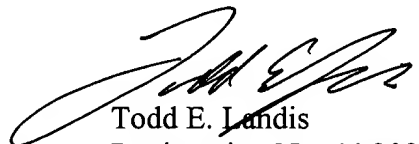
### Conclusion

The pending claims are drawn to novel subject matter, and are not obvious in light of the cited references. Applicant respectfully requests that the examiner reconsider and withdraw the outstanding rejections, and allow claims 1-45. Applicant also requests that the examiner call the undersigned for any reason that would advance the instant application to issue.

This response does not increase the number of independent claims, and does not increase the total number of claims to more than previously paid for, respectively, and does not present any multiple dependent claims. Accordingly, no fee based on the number or type of claims is currently due. However, if a fee, other than the issue fee, is due, please charge such fee to Deposit Account No. 07-0153.

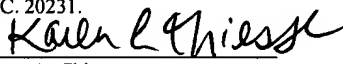
Dated: January 21, 2003

Respectfully submitted,

  
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Date of Deposit: <u>January 21, 2003</u>
I hereby certify that this paper or fee is being deposited with the United States Postal Service as "First Class Mail", postage prepaid on the date indicated above and is addressed to: Box:Office of Petitions, BOX DAC, Commissioner for Patents, Washington, D.C. 20231.

Karen L. Thiesse (Name of person mailing paper or fee)